

§ 561.401

Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(c) The term *medical devices* has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

Subpart D—Interpretations

§ 561.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 561.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 561.403 Facilitation of certain efforts, activities, or transactions by foreign financial institutions.

For purposes of §§ 561.201 and 561.203 of this part, the term *facilitate* or *facilitated* used with respect to certain efforts, activities, or transactions refers to the provision of assistance by a foreign financial institution for those efforts, activities, or transactions, including, but not limited to, the provision of currency, financial instruments, securities, or any other transmission of value; purchasing; selling;

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transporting; swapping; brokering; financing; approving; guaranteeing; or the provision of other services of any kind; or the provision of personnel; or the provision of software, technology, or goods of any kind.

§ 561.404 Significant transaction or transactions; significant financial services; significant financial transaction.

In determining, for purposes of § 561.201(a)(5), whether a transaction is significant, whether transactions are significant, or whether financial services are significant, or, for purposes § 561.203(a), whether a financial transaction is significant, the Secretary of the Treasury may consider the totality of the facts and circumstances. As a general matter, the Secretary may consider some or all of the following factors:

(a) *Size, number, and frequency.* The size, number, and frequency of transactions, financial services, or financial transactions performed over a period of time, including whether the transactions, financial services, or financial transactions are increasing or decreasing over time and the rate of increase or decrease.

(b) *Nature.* The nature of the transaction(s), financial services, or financial transaction, including the type, complexity, and commercial purpose of the transaction(s), financial services, or financial transaction.

(c) *Level of Awareness; Pattern of Conduct.* (1) Whether the transaction(s), financial services, or financial transaction is performed with the involvement or approval of management or only by clerical personnel; and (2) Whether the transaction(s), financial services, or financial transaction is part of a pattern of conduct or the result of a business development strategy.

(d) *Nexus.* The proximity between the foreign financial institution engaging in the transaction(s) or providing the financial services and a blocked person described in § 561.201(a)(5), or between the foreign financial institution conducting or facilitating the financial transaction described in § 561.203 and the Central Bank of Iran or a designated Iranian financial institution,

as defined in § 561.324. For example, a transaction or financial service in which a foreign financial institution provides brokerage or clearing services to, or maintains an account or makes payments for a blocked person described in paragraph (a)(5) of § 561.201, the Central Bank of Iran, or a designated Iranian financial institution in a direct customer relationship generally would be of greater significance than a transaction or financial service a foreign financial institution conducts for or provides to a blocked person described in § 561.201(a)(5), the Central Bank of Iran, or a designated Iranian financial institution indirectly or in a tertiary relationship.

(e) *Impact.* The impact of the transaction(s) or financial services on the objectives of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, or of the financial transaction on the objectives of the National Defense Authorization Act for Fiscal Year 2012, including:

(1) The economic or other benefit conferred or attempted to be conferred on a blocked person described in § 561.201(a)(5), or on the Central Bank of Iran or designated Iranian financial institution, as described or defined in §§ 561.203 and 561.324;

(2) Whether and how the transaction(s), financial services, or financial transaction contributes to the proliferation of weapons of mass destruction or delivery systems for such weapons, to support for international terrorism, to the suppression of human rights, to an increase in Iran's crude oil revenues, or to connecting the Central Bank of Iran or a designated Iranian financial institution to the international financial system; and

(3) Whether the transaction(s), financial services, or financial transaction supports humanitarian activity or involves the payment of basic expenses as specified in and authorized pursuant to UNSC Resolution 1737 or the payment of extraordinary expenses that have been authorized by the Sanctions Committee established pursuant to UNSC Resolution 1737, or the payment for the sale of food, medicine, or medical devices to Iran.

(f) *Deceptive practices:* Whether the transaction(s), financial services, or fi-

ancial transaction involves an attempt to obscure or conceal the actual parties or true nature of the transaction(s), financial services, or financial transaction or to evade sanctions; for example, whether the transaction enabled the Central Bank of Iran to facilitate the evasion of sanctions by a blocked person described in § 561.201(a)(5) or a designated Iranian financial institution, as defined in § 561.324.

(g) *Central Bank of Iran Reserves, Settlement Services, Foreign Currency Exchanges, and Official Development Assistance Repayment:* Other factors involved in making a determination of whether a transaction(s), financial service, or financial transaction is significant are whether the transaction solely involves the passive holding of Central Bank of Iran reserves by a foreign financial institution; whether the Central Bank of Iran's role is limited to providing settlement services or foreign currency exchanges in transactions between a non-designated Iranian financial institution and a foreign financial institution; and whether the transaction involves only the repayment of official development assistance by the Central Bank of Iran or the transfer of funds required as a condition of Iran's membership in an international financial institution.

(h) *Other relevant factors.* Such other factors that the Secretary deems relevant on a case-by-case basis in determining the significance of a transaction(s), financial services, or financial transaction.

§ 561.405 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50